



Department  
for Transport

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Broadfield Law UK LLP  
One Bartholomew Close  
London  
EC1A 7BL

19 May 2025

Dear Sir or Madam,

## **PLANNING ACT 2008**

### **APPLICATION FOR A NON-MATERIAL CHANGE TO THE MANSTON AIRPORT DEVELOPMENT CONSENT ORDER 2022**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the non-material change application ("the Application") by Broadfield Law UK LLP on behalf RiverOak Strategic Partners Ltd ("the Applicant") made on 20 March 2025 seeking an amendment to the Manston Airport Development Consent Order 2022 (S.I. 2022/922) ("the 2022 Order"). The Application was made under paragraph 2 of Schedule 6 of the Planning Act 2008 ("PA08"). This letter is the notification of the Secretary of State's decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations").

2. The 2022 Order was granted on 18 August 2022 following a redetermination process subsequent to the quashing by the High Court of the previous Order granted on 9 July 2020. The 2022 Order allows for the reopening and redevelopment of Manston Airport into a dedicated air freight facility ("the Development"). The Development site is on the existing site of Manston Airport, west of the village of Manston and north east of the village of Minster, in Kent. The 18 August 2022 decision letter sets out the reasons and considerations on which the decision to grant the 2022 Order is based.

3. On 22 September 2023, the High Court rejected a legal challenge to the decision to grant the 2022 Order. The challenge was subsequently dismissed by the Court of Appeal on 21 May 2024.

4. The 2022 Order was then amended by an application for a non-material change which was made on 22 September 2023. The Amendment Order authorised non-material changes which amended the security figure in article 9(1)(a) and corrected a drafting error in article 21(3) regarding the time limit for the exercise of compulsory acquisition of land.

5. The Applicant originally agreed to reduce the time limit for compulsory acquisition (and temporary possession) powers to one year to alleviate the concerns of the main landowner and objector of the Development. The Secretary of State is aware that the Applicant subsequently acquired the whole of Manston Airport prior to the close of Examination and now owns around 90% of the Order land.

6. The Applicant is seeking a change to the 2022 Order to amend the time limit for exercising compulsory acquisition (and temporary possession) powers set out in article 21(3) from “one calendar year” to “five calendar years” to reflect its acquisition of the main airport site and to align with the established precedent of compulsory acquisition time limits. The amendment would result in the time limit being extended from 20 May 2025 to 20 May 2029.

## **Summary of Secretary of State’s Decision**

7. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the PA08 to make a non-material change to the 2022 Order so as to authorise the further change detailed in the Application. The Secretary of State has also made minor drafting changes to the Order, amending the 2022 Order.

## **Consideration of the Materiality of the Proposed Change**

8. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, she has had regard to paragraph 2(2) of Schedule 6 to the PA08 which requires the Secretary of State to consider the effect of the change, together with the previous changes, on the 2022 Order as originally made.

9. There is no statutory definition in the PA08 or the 2011 Regulations of what constitutes a ‘material’ or ‘non-material’ change for the purposes of Schedule 6 to the PA08 and Part 1 of the 2011 Regulations.

10. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the former Department for Communities and Local Government, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Change Guidance”), which makes the following points. First, given the range of infrastructure projects that are consented through the PA08, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material and such decisions will inevitably depend on the circumstances of the specific case. Secondly, there may be certain

characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:

- (a) A change should be treated as material if it would require an updated Environmental Statement to take account of materially new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated Environmental Statement will still be required, and the application will need to be treated as a material change to ensure that the regulatory requirements on Environmental Impact Assessment are met.
- (b) A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
- (c) A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order.
- (d) The potential impact of the proposed change on local people will also be a consideration in determining whether a change is material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

11. Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

12. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

(a) Environmental Statement

The Secretary of State has considered whether the Application would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the application for the 2022 Order. The Secretary of State has considered the nature of the change sought by this Application, and notes that the change would not result in a new environmental impact or impact on amenity. The Secretary of State is therefore of the view that there will not be any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the authorised Development and as such she considers that there is no requirement to update the Environmental Statement. Since there are no new significant environmental impacts as a result of the Application, the Secretary of State does not consider that there is any need for consultation on

likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

(b) Habitats Regulations Assessment

The Secretary of State has considered her obligations as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State to consider whether the change to the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network. As set out above, the Secretary of State has considered the nature of the change sought through the Application and is satisfied that as the Application will not result in development with a new environmental impact or impact on amenity, there is not likely to be a significant effect on any European site as a result of this change. Therefore, the Secretary of State is satisfied that a Habitats Regulations Assessment is not required. Furthermore, in respect of European Protected Species, the Secretary of State is satisfied that the proposed change does not bring about the need for a new or additional licence as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective.

(c) Compulsory Acquisition

In respect of compulsory acquisition, the Secretary of State notes that while the Application seeks to amend article 21(3) to extend the time limit for exercising compulsory acquisition (and temporary possession) powers from “one calendar year” to “five calendar years”, the Application would not authorise the compulsory acquisition of land, interest in or rights over land that was not authorised by the 2022 Order and not shown in the land plans listed in Schedule 10 of that Order. The Secretary of State is therefore satisfied that these matters do not raise any issues of materiality in relation to the proposed changes.

(d) Impacts on local people

Given the nature of the change being sought, the Secretary of State has concluded that local people will not experience a change in the environment or in amenity as a consequence of the proposed change; and therefore the change would not result in a Development inconsistent with the 2022 Order. She is also content that, given no change is anticipated to the impacts already assessed in the Environmental Statement submitted in support of the application for the 2022 Order, the potential impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2022 Order.

13. For the reasons explained in in paragraph 12, the Secretary of State is satisfied that the change sought by the Applicant is not material and should therefore be dealt with under the procedure for non-material changes.

## **Consultation**

14. The Applicant submitted a request on 6 March 2025 for the Secretary of State's consent for a limited consultation exercise under regulation 7(3) of the 2011 Regulations. The Secretary of State considered this request and considered the parties proposed in the Applicant's spreadsheet to accurately represent those which should be consulted. She gave written consent to the reduced consultee list on 6 March 2025, which was published on the Planning Inspectorate's website on 21 March 2025.

15. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and on 21 March 2025 consulted the persons required by regulation 7 of the 2011 Regulations in the manner prescribed. The deadline for the receipt of representations on the Application was 29 April 2025.

16. The Application was made available on the Planning Inspectorate's website on 21 March 2025 so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

17. The Applicant provided a response to the Secretary of State on the consultation responses on 8 May 2025. This has been published alongside the decision letter.

18. The Secretary of State has considered the representations received in response to the consultation and the Applicant's response and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.

## **Consultation responses**

19. A total of four responses were received and published on the Planning Inspectorate's website during the consultation period. The Secretary of State notes that one representation was opposed to the change application, one was in favour, one was not related to the application and the final one was not opposed to the change.

20. The Secretary of State notes that a local resident raised concerns that as the Applicant had agreed to the shorter timescale in their original application, it should not find excuses to further delay the project. The Secretary of State does not consider that the amendment would delay the project, as the proposed time limit aligns with requirement 2 of Schedule 2 to the 2022 Order, which sets out that the authorised development must commence no later than five years after the date the Order comes into force.

21. A further local resident raised concerns on the impact of the Development on the traffic volume at Spitfire Way. While the Secretary of State notes the resident's concerns, she does not consider this concern as relevant to the non-material change

application being considered. The full rationale behind the granting of the 2022 Order is set out in the decision letter dated 18 August 2022.

22. Thanet District Council (“TDC”) initially raised concerns that by increasing the period of uncertainty of compulsory acquisition, this may have an effect on “local people and businesses” regarding the consideration of the materiality of the change set out in the tests outlined in the Change Guidance.

23. However, the Secretary of State is aware that TDC did not object to the non-material change application. TDC considers the application to be acceptable as the proposed extended compulsory acquisition timeline would align with the time limit for the completion of the Development, set out in requirement 2 of Schedule 2 to the 2022 Order, and reflects the usual timeframe for the exercise of the compulsory acquisition powers.

24. TDC also requested that the views of local residents are taken into account in reaching a decision on the Application. As previously mentioned, the consultation of the Application was also made available through the Planning Inspectorate’s website and was open to local residents to provide a response. The Secretary of State has taken into account all the responses that have been received when coming to her conclusion.

## **General Considerations**

### Equality Act 2010

25. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; sex; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

26. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting the changes will affect adversely the achievement of those objectives.

### Human Rights Act 1998

27. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the proposed changes to the 2022 Order. The Secretary of State considers that the grant of the Application would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

### Natural Environment and Rural Communities Act 2006

28. In making a decision on the Application for the proposed changes to the 2022 Order, the Secretary of State has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021. The Secretary of State notes that there will be no new environmental effects as a result of the Application, and as such considers that no further action regarding the conservation and enhancement of biodiversity is required.

## **The Secretary of State's overall conclusion and decision**

29. The Secretary of State is satisfied that the principle of the Development continues to be supported by relevant national aviation policy, aviation planning policies and other relevant policies as stated in the decision letter dated 18 August 2022.

30. The Secretary of State has considered the nature and effect of the proposed change, noting that it would have no materially new or materially different likely significant environmental effects. She is satisfied that the conclusions of the Environmental Statement submitted in support of the application for the 2022 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

31. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the change sought by the Applicant is a material change and is satisfied that the proposed change requested by the Applicant is not a material change to the 2022 Order.

32. The Secretary of State has considered the Application, the matters set out in the Change Guidance and the consultation responses received. For the reasons set out in this letter she is satisfied that the change to the extension to the time limit for exercising compulsory acquisition (and temporary possession) from "one calendar year" to "five calendar years" is appropriate as it aligns with the five year period for exercising powers of compulsory acquisition that is reflected in most of the recent development consent orders and for the reasons set out in the Application she considers that the change is justified.

33. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the PA08 Act to make a non-material change in relation to the 2022 Order so as to authorise the change sought by the Applicant.

## **Challenge to the decision**

34. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached to the Annex to this letter.

## **Notification of decision**

35. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours faithfully,

Kayla Marks



## LEGAL CHALLENGES RELATING TO DECISIONS MAKING CHANGES TO DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the PA08 to make a change to an Order granting development consent, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The Manston Airport Development Consent (Amendment) Order 2025 is being published on the Planning Inspectorate website at the following address:

[Manston Airport - Project information](#)

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).